S.B. Civil Misc. Appeal No.538/2003

National Insurance Company Limited.

vs.

Naini and others.

Date : 5.8.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. S Johari, for the appellant.

Mr. JR Choudhary, for the respondents/claimants.

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Heard learned counsel for the parties.

The only grievance of the appellant in this appeal is that though the Motor Accident Claims Tribunal (for short "Tribunal") in its award dated 7.4.2003 held that the appellant insurance company is not liable to pay the compensation amount but held that the insurance company shall be liable to pay the compensation amount to the claimants and shall have right to recover the said amount from the insured owner of the vehicle but inadvertently, in the operative portion of the award, the award has been passed against the appellant company without mentioning that there is no liability of the appellant company and the appellant company shall be entitled to recover the award amount from the owner of the vehicle after paying it to the claimants. Therefore, that mistake may be corrected and it may be held that the appellant company after payment of the compensation amount in pursuance to the impugned award shall have the right to recover the amount from the insured

owner of the vehicle and for that purpose, the appellant company shall not have to file any suit for recovery of the amount and the same can be recovered through the process which may be initiated by the appellant company before the Tribunal itself in view of the judgment of Supreme Court.

Learned counsel for the claimants also agrees that the appellant company since has been exonerated, therefore, they may take action whatever they want to take but so far as the claimants right to take money from the appellant company is concerned, it remains admitted.

Nobody appeared on behalf of the owner of the vehicle despite service.

In view of the settled position of law and in view of the finding recorded by the Tribunal in its award, the appellant company has not incurred the liability of compensation but still the appellant shall pay the compensation amount to the claimants and the appellant company shall have right to recover the said amount from the insured owner of the vehicle. In view of the judgment of the Hon'ble Apex Court, the appellant company shall not have to file any suit for recovery from the owner but may recover the amount from the owner by initiating proceedings before the Tribunal and the Tribunal shall decide the appellant's application in the light of the decision given by the Hon'ble Supreme Court delivered in the case of Oriental Insurance Co. Ltd. vs. Nanjappan and others

reported in 2004 ACJ P.721.

The claimants also submitted cross objections for getting more compensation. According to learned counsel for the claimants, the Tribunal has committed error of law in awarding low compensation to the claimants.

I have considered the submissions of learned counsel for the claimants and perused the reasons given by the Tribunal while awarding the compensation amount.

The Tribunal, on the basis of evidence available on the record and after taking into account the age of deceased's son held that the deceased was 50 years of age. The deceased was not getting any fixed salary and he was getting casual wages only. The deceased's son was produced to prove the income of the deceased and he admitted that he is the age of 30 years and is getting Rs.50/- and that too occasionally only otherwise he was getting wages of Rs.15 to Rs.20/- per day. In the light of above evidence, the Tribunal held that the income of the deceased was Rs.15,000/- and applied multiplier of 11 and looking to the totality of the facts of the case, I do not find that the Tribunal has committed any error in awarding compensation of Rs.1,45,000/-.

Accordingly, this appeal is allowed to the above extent and the cross objection is dismissed.

The stay order granted by this Court dated 17.11.2003

is vacated and the stay petition is, therefore, dismissed.

(PRAKASH TATIA), J.

S.Phophaliya